JUDICIAL INTERPRETATIONS OF LAWS RELATING TO SCHOOL BONDS

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In comparatively recent times there has grown up in the United States a species of negotiable security known as school bonds. A school bond is an evidence of indebtedness issued under legislative authority by the state or by some one of its minor subdivisions. It is negotiable in character and form, payable at a future date, transferable by indorsement or delivery, and usually under the seal of the corporation issuing it. In most cases it has coupons attached representing the annual or semiannual instalments of interest as they respectively fall due.

The law in the United States relating to school bonds is largely determined by the courts. There have arisen from time to time questions concerning the interpretation of statutory enactments. In such instances the judicial branch of the state or national government has been called upon to decide the points at issue. Since the principles that underlie school bonds are much the same everywhere, it is obvious that the decisions of the courts exhibit a marked degree of uniformity. Naturally, it follows that the court decisions constitute a body of legal principles more or less uniform and general in nature, which is of use to the layman as well as to the professional school officer and the student of school bonds. A digest of court decisions relating to principles underlying school bonds in general will be undertaken in the following pages.

A school district has such power to issue bonds for school purposes and such only as is conferred upon it by the constitution or the legislature, either expressly or by necessary implication. Since a school district is a creature of the state, it must look to the state for a grant of authority to do anything. This principle is especially applicable to the incurring of indebtedness. When the power is expressly given and under constitutional authority, the only question arising in connection with its exercise is that relating to the

manner in which it may be carried out. Modern authorities all agree on the principle that the power to incur indebtedness through the issue of negotiable instruments must be expressly or impliedly given by either the constitution or the legislature of the state.[1]

The expenditure of public moneys depends on the levy and collection of taxes, on the incurring of indebtedness, or on the creation of obligations which ultimately must be paid from the public treasury. It can be seen, therefore, that extravagant expenditures and losses resulting from fraudulent or imprudent contracts do not fall, except in the most indirect manner, on those who have been guilty of the foolish, unwise, or improvident acts. It is generally the practice of the courts to adhere to a strict construction of express provisions in constitutions, statutes, and charters of public corporations, since the money to meet expenditures is derived from the whole people. Usually, where any doubt whatever exists as to the authority of a school district to issue negotiable securities, the court will not uphold the issue.[2]

Contrary to the usual practice of the courts in construing very strictly the right of public corporations to issue negotiable paper, there are cases where a right to issue such a paper may be implied. Such a right may arise for the purpose of enforcing just obligations.[3] Where authority is given by law for the purpose of issuing bonds to build schoolhouses, it is reasonable to assume that a schoolhouse already built may be purchased.[4] In a case, on the other hand, where the trustees of a school district are granted the authority by the constitution or by the statute to give their note, certificate, or warrant as an obligation of indebtedness, there is no implication by any kind of construction that bonds may be issued in the absence of a statutory enactment to that effect. The purpose for which bonds are issued has a strong bearing on their validity, even when the issuance is based on statutory authority. A school board, for example, cannot issue bonds to build a dormitory or a rooming-house when the statute provides for school buildings only.[5]

[1] *Schmutz* v. *Little Rock*, 78 Ark. 118.

[2] *Ashuelot National Bank* v. *District No. 7*, 56 Fed. 191.

[3] *Erwin* v. *St. Joseph*, 12 Fed. 680.

[4] *Sherlock* v. *Winnetka*, 68 Ill. 380.

[5] *Revell* v. *Mayor of Annapolis*, 81 Md. 1, 31 Atl. 1695.

The state itself, through special legislative enactment, may direct a school district to issue bonds, provided the constitution of the state does not prohibit it, or it may validate the indebtedness that has already been incurred by a district on the ground that the legislature is the source of power and that the taxing power for state purposes is a state privilege. The schools of the state are branches of the state government and are subject to the parent authority.[1]

The fact that a bond was not authorized undeniably renders it void, and an innocent holder cannot recover its value.[2] In a case where bonds are void because of lack of authority to issue them, such bonds are not rendered valid by a vote of the people of the district where the law does not authorize such a vote.[3]

The usual construction of the word "indebtedness" or "debt" excludes securities, negotiable or otherwise, issued under authority of law for the purpose of funding or refunding outstanding corporate indebtedness. The courts very generally hold that the issue of such certificates or obligations does not increase or add to the debts of the corporation but merely changes their form. The earlier constitutions make no provision for refunding bonds, but most of the later ones and the statutes of practically all of the states provide means of refunding. Usually the law prevents a higher rate of interest and in most cases demands a lower rate in case bonds are refunded. In most cases a bond cannot be refunded except upon a vote of the people. When the time of maturity is lengthened or the interest is lessened, it is often to the advantage of the school district to refund its debt by issuing refunding bonds for the purpose, but in no case can the indebtedness of a school district be enlarged by the issuance of such bonds. In all cases the debt to be refunded must be taken cognizance of in order to ascertain whether it falls under the provision of the statute.[4]

At times it is provided by statute that a school district cannot issue bonds in excess of a specified amount or beyond an amount which would increase the aggregate indebtedness to a certain limit.

[1] *People* v. *Sisson*, 98 Ill. 349.

[2] *Hewitt* v. *Normal Board of Education*, 94 Ill. 528.

[3] *State* v. *L'Engle*, 40 Fla. 392, 24 So. 539.

[4] *Woods* v. *Board of Education*, 53 S.W. 517, 21 Ky. L.R. 941.

Usually the rate is based on the taxable property of the district assessed for state purposes at the legal time for the assessment of the previous year. In the case of cities, where property is assessed semiannually, the last legal date is the one considered. When such a statute exists, making a certain percentage of the taxable property the limit, it may be implied that any amount less than the limit would be legal.[1]

It sometimes happens that a statute places a limit on the bonded indebtedness of a school district but does not limit the total indebtedness or the aggregate amount that may be incurred. In a case of this kind it is patent that the court will base judgment on the meaning of the wording of the statute.[2]

Confusion often arises in interpreting the provisions of the statutes where there are different limits for different classes of school districts, and only the opinion of the court may set it right.[3] In most states where a school district is coincident with the territory occupied by a city, unless the statutes provide to the contrary, the district is a separate corporation, and the statute limiting indebtedness does not apply to the territory but to the corporate entity. Hence, a limitation placed on a municipality will not as a rule affect the school district, even though the district may embrace the same territory as the municipality.[4]

When a question as to the validity of an issue of bonds is raised, on the point that the limit of indebtedness has been exceeded, it cannot be contended that the tax list for the next assessment shall determine the amount of tax that may be imposed or of bonds that may be issued. The tax lists of the last fiscal year are the ones which shall be used as a basis for the purpose of determining the amount that can be raised legally.[5]

The bonded indebtedness of school districts, when limited by a constitutional or statutory act, is not impaired or repealed if the indebtedness has been incurred before the constitutional or statu-

[1] *Rogers* v. *Carlyle*, 15 S.W. 587, 11 Ky. L.R. 934.

[2] *Geer* v. *Ouray County*, 111 Fed. 682.

[3] *Snyder* v. *Baird*, 111 S.W. 723, 113 Tex. 521.

[4] *Campbell* v. *Indianapolis*, 155 Ind. 186, 57 N.E. 920.

[5] *Vaughn* v. *Tillamook County*, 27 Oreg. 57, 39 Pac. 393.

tory enactment. Bonds issued before a limitation act was passed are generally held to be valid, and a district cannot deny the validity of such bonds because they exceed the debt limit. Such bonds may also be refunded on the ground that they are the legal debt of the district, so long as the debt is not increased by the refunding.[1]

In most cases where an issue of bonds is partly within and partly beyond the limit, the issue may be sustained up to the amount of the limit, although some courts which hold to the very strict construction of the rights of public corporations declare the whole issue void. The decisions which declare the amount within the limit of the indebtedness valid and that beyond the limit invalid seem to be greatly in the majority. There is another line of decisions which declare that each bond shall be scaled down its proportional share until the whole issue is within the statutory bounds.

In the event that bonds are issued for the purpose of taking up outstanding indebtedness or of funding outstanding indebtedness and they are not used for that purpose, they create a debt, and they are void to the extent that they increase the debt of the district beyond the prescribed limit. If the bonds are refunding bonds, or if the indebtedness is in the form of a judgment against the district, the debt is not extended, and the bonds are valid; but if bonds are voted for the purpose of refunding or of paying a judgment and are not used for that purpose, then it is manifest that no debt has been extinguished, and the district has a greater indebtedness than it had before.

Where constitutional or statutory provisions require that the question of the issuance of school bonds shall be submitted to the voters or the inhabitants of a school district, compliance with all of the requirements of such provisions is necessary to establish the validity of the issuance of the bonds. In some states the requirement that the consent of the voters be secured applies to all forms of indebtedness; in others, authority is conferred on certain officials to issue negotiable securities or to incur indebtedness to a certain maximum amount without the consent of the voters. In the latter case it is often provided that the limit can be increased

[1] *Miller* v. *School District No. 3*, 5 Wyo. 217, 39 Pac. 879.

to a certain specified amount or for certain extraordinary and excepted expenditures only by and with the consent of the qualified voters.

The statutes and constitutions of the various states so commonly insist on the assent of the electorate to any kind of bond issue that among the first inquiries concerning the validity of a bond issue is the question, Were they issued by an election wherein the qualified voters gave their assent in substantial compliance with the provision outlined by the constitution or statutes for such an election? It is hardly necessary to say that most courts hold that issues are invalid unless the securities are issued in conformity with the prescribed conditions noted in the statutes.

Nearly all cases that come up in the courts referring to the validity of bond elections arise from negligence or failure to comply exactly with the statute regarding the manner of holding the election or from some question as to the qualification of the voters.[1] It is generally provided that a certain number of the qualified voters shall authorize the trustees to issue school bonds. In many cases where taxation or indebtedness is to be imposed on a district it is specified that only taxpayers who are eligible in every other respect are qualified to vote on bond issues. A few states leave the question open to the whole electorate.[2]

The courts hold that a majority of those voting at any regularly called election, when due and legal notice has been given, is sufficient to determine an election unless the law requires a larger percentage. Usually the law requires that due notice be given of an election at which the issuance of bonds is to be determined. In all cases it is necessary that the statutory provisions be complied with. The courts insist with strictness on the carrying out of these provisions, for an indebtedness is placed on the people when a bond issue is voted. Fraud is very easily perpetrated in cases of this kind, and the rights of the electorate must be safeguarded.[3]

A vote of a majority of those voting at an adjourned session of an annual school meeting in favor of school bonds is valid, although

[1] *Topeka Board of Education* v. *Welch*, 51 Kan. 792, 33 Pac. 654.

[2] *Rogers* v. *Carlyle Graded School*, 13 S.W. 587.

[3] *Sauk Centre* v. *Moore*, 17 Minn. 391.

the voters in favor of the bonds are not a majority of the voters of the school district, or of those who were present at the regular school meeting, or even of those present at the adjourned meeting. The courts generally hold that where the law is carried out in other respects the majority of those voting determines the results of an election. This interpretation of the law is based on the consideration that all of the qualified voters at the meeting and of the district had the privilege of voting if due notice was given.[1]

It is a general rule that in submitting the question of the issuance of school bonds the ballot must fairly and intelligently present the question to be voted on; but where all of the preliminary steps are regular, an omission in the proposition submitted of a statement as to the limit of the indebtedness incurred will not invalidate the election. The law presumes that public officers do their duty, and such presumption exists until it is overthrown by testimony.[2] It is generally held that bonds are valid when voted at an election even where the notice was not wholly regular if the issue is not attacked for a certain definite time or, in some instances, after the bonds are sold.[3]

At the place where the election is held all procedure must conform to the requirements of the statutes. The statutes of the various states prescribe different ways for holding all kinds of elections, and the method of holding the particular election under consideration is the manner which must be followed in order to make the results legal.[4]

The record that is filed with the county officer should correctly state, as nearly as possible under the circumstances, all of the facts that pertain to the issue of the bonds. If the records do not show that the vote authorizing the issuance of the bonds was by ballot, it will not invalidate the bonds where it appears that the election was held and the proposition was unanimously carried or overwhelmingly carried, since it must be assumed that the election was legal.[5]

[1] *Miller* v. *School District No. 3*, 5 Wyo. 217, 39 Pac. 879.

[2] *Callahan* v. *Hansacker*, 133 Iowa 622, 111 N.W. 22.

[3] *Hawsworth* v. *Mueller*, 25 Mont. 156, 64 Pac. 324.

[4] *Nichols* v. *Pierce*, 39 Wash. 137, 81 Pac. 325.

[5] *Bauer* v. *District No. 127*, 78 Mo. App. 442.

A statutory provision that upon a prescribed vote the school board shall forthwith issue bonds is mandatory. The people have expressed their will on the subject; the needs of the district are judged by the voters, and the voters are the ones who will pay the taxes in order to raise the funds to meet the obligations on the indebtedness of the district when they are due; therefore, a board of trustees cannot set aside the will of the taxpayers and substitute their own. A vote in the affirmative amounts to an instruction to the board, and the duties of the board thereafter consist in obeying implicitly the directions of the voters so given.[1]

It necessarily follows that the authority to issue bonds for the purpose of building a schoolhouse or of purchasing a school site implies the power to sell such bonds in order to obtain the necessary funds to execute the project. When the bonds are sold, it is also implied that the funds may be used.[2] The statutes of a state usually specify the terms upon which school bonds may be sold. Such details as the following are usually specified: the manner of preparing the bonds for sale, the matter that is to be published in the recitals, the denominations of issue, whether the bonds are to be coupon or registered bonds, registry with the county clerk, and the signature of the proper officer or officers.[3]

Practically all of the states have placed a limit on the price at which bonds shall be sold. In most instances a bond cannot be sold at a price less than the face value. This is especially true since a market for bonds has been developed and since school bonds have come to be recognized as excellent securities. At first it was necessary that a school bond should bear a high rate of interest. Sometimes, in order to dispose of it, it was necessary to sell it at as little as ninety cents on the dollar. At the present time the statutes protect the taxpayers by making the interest rate low and legislating par as the minimum price at which school bonds can be sold. Today the attractive value of a school bond is its security and negotiability.

[1] *Schouweiler* v. *Allen*, 117 N.W. 866.

[2] *Lanford* v. *Drummond*, 81 S.C. 174, 62 S.E. 10.

[3] *Sauk Centre* v. *Moore*, 17 Minn. 391.

In some cases the law provides that the sale of bonds must be for cash; but when there is general statutory authority to issue bonds and to negotiate them to the best advantage, there is no limitation as to the manner of payment.[1]

Where it is provided that the bonds shall be sold after advertisement to the highest bidder, there must be substantial compliance with the law. Even though the statutes provide a limitation as to the interest that the bonds shall bear, the school board may in the advertisement specify a much lower rate. Again, the school board is not required to accept the highest bid that is received for the bonds. The board must take into consideration the character and reliability of the firms that are bidding. The board may reserve the right to reject any and all bids that are received.[2]

In order that school-district bonds shall be valid, it is essential that there be at least substantial compliance with all of the statutory requirements as to the proceedings to be had and the manner in which such bonds should be issued. Generally, technicalities are not allowed to determine the validity of a bond issue. The courts inquire into the legality and where there is irregularity seek to determine whether there was any fraudulent intent.[3] The bonds issued should comply substantially with the statutory provisions as to the proceedings of their issuance by the particular officers authorized.

The statutes in nearly all of the states provide that the face of the bonds shall state in good faith the purpose for which they were issued, that the school district received ample compensation for them, and that the purchasers of them are bona fide.[4] When a bond states on its face that it was issued for the purpose of purchasing a site and building and furnishing a schoolhouse, it is held that there is compliance with the statute which provides that the purpose for which bonds are issued shall be stated on the face of the bond. There is at least substantial compliance, and that is all that the statute demands.[5]

[1] *Sauk Centre* v. *Moore*, 17 Minn. 412.

[2] *Parkinson* v. *Seattle*, 28 Wash. 335.

[3] *State* v. *Brock*, 66 S.C. 357, 44 S.E. 931.

[4] *State* v. *Chautauqua*, 34 Kan. 237, 8 Pac. 308.

[5] *Dakota School District* v. *Chapman*, 152 Fed. 887.

Bonds voted by the officers of a school district must be signed by the proper officers before they are valid. Those signing bonds must be actually and legally holding office when they attach their names, or their signatures will be invalid. It is usually considered that there is a presumption of law that the officer signing the bonds did so after he qualified. When an officer permits someone else to sign for him, the court will usually hold that the signature is sufficient and the bonds are not invalidated.[1]

Bonds in many instances are not invalidated by the fact that they are authorized for a less amount than that voted on, or by the failure to provide a sinking fund for the payment of the bonds, or by the fact that a tax for interest is levied in excess of the amount required for interest on such bonds.

Mere irregularities in the issuance of school-district bonds will not invalidate them if they are otherwise valid.[2] When bonds are issued and fail to state on their face the denominations in which they are to be issued, they are void, especially when the statute or constitution of the state expressly provides that the denomination shall be shown. If the bonds are issued in denominations less or more than the law provides, they are void.[3]

Where, as required by statute, the proper officer files a statement showing that all of the statutory provisions have been complied with, the school district is estopped from setting up a claim that the bonds were not issued in compliance with the statute. Where the determination of such facts is not left to the board officers issuing the bonds, but is required to be made a matter of public record, recitals in the bonds do not estop the district from setting up the claim that the bonds were not issued in compliance with the statute.[4] A recital on the face of a bond signed by school officials to the effect that all of the requirements of the law have been met will not serve as an estoppel upon the district when such officers have not been authorized by the law to make the recital.[5] Nor is a district

[1] *Pawnee County School District* v. *Xenia*, 19 Neb. 89.

[2] *Brand* v. *Lawrenceville*, 104 Ga. 486, 30 S.E. 954.

[3] *School District No. 4.* v. *Xenia*, 19 Neb. 89.

[4] *Schmutz* v. *Little Rock*, 78 Ark. 118, 95 S.W. 438.

[5] *Thornburg* v. *Charlton County*, 175 Mo. 12.

estopped by recitals which show that the bonds were issued without authority or for an unauthorized purpose.[1] A bona fide holder cannot acquire a title to bonds thus issued which relieves them of their infirmity.

When an officer of a school district has, apparently with the authority of the district, paid money on one of its bonds, the district must disprove his authority in order to prove that it should not be held responsible.[2] It is then safe to conclude that where a school-district officer participates in such a negotiation and the sale of certain bonds issued by the district and purporting to be signed by him, the district is estopped from denying his signature.

As a rule, the payment of school bonds by a proper board extinguishes them and they cannot be reissued; and where a board is not negligent in seeing that one of its members follows its instructions as to canceling the bonds, it is not estopped from denying the validity of the reissuance by him.[3] It is also true that an invalid issue of bonds may be subsequently ratified and rendered valid by an act of the legislature, within constitutional limits.[4]

The power of providing for and making payment of school-district bonds and the time and manner of doing so depend on the terms of the particular constitutions or statutes of the various states. There is no agreement among the several states as to the number of years that bonds may run, as to the amount that is to be set aside as a sinking fund, as to the time that the redemption of bonds may begin, or as to the amount of interest that they will bear. Each state makes its own provision for the payment and the redemption of bonds. In the absence of prescribed legal procedure, the community will follow the procedure generally pursued. If the law of a state provides that a sinking fund shall be set aside each year for the redemption of bonds, it is the duty of the board to set aside a sinking fund. If the law provides that no bonds shall be redeemed until all of them mature, or that a certain number of bonds shall be redeemed each year, then it is the manifest duty of

[1] *State* v. *Sherman County*, 16 Neb. 182, 20 N.W. 209.

[2] *York County* v. *Holmes*, 16 Neb. 486, 20 N.W. 721.

[3] *Westwood* v. *Sinton*, 41 Ohio St. 504.

[4] *Campbell* v. *Indianapolis*, 155 Ind. 186, 57 N.E. 920.

the school board to carry out the law. It may be taken for granted when a bond issue is made that a tax will be levied to meet the bonds.[1]

The right of a holder of a school-district bond to recover thereon cannot be defeated because of the misapplication of the proceeds of such bond; nor is it any defense against bona fide purchasers that the citizens and officers of a municipal corporation, with the intention to use the bonds unlawfully, took the necessary steps to issue them for a lawful purpose, certified on the face of the bonds that they were issued for a lawful purpose, and then appropriated the funds for an unlawful purpose.[2]

Any action at law must be taken against the proper school officers in their corporate capacity. Under some statutes, however, a special remedy is given to a holder of a bond if there is failure to pay the interest or the principal, whereby sufficient taxes may be levied by adding to the tax list to pay the amount due. But such special remedy does not deprive the holder of his usual remedy for the collection of the bond. Nor will a remedy given by statute impair a right of action on a bond existing at the time of the passing of the statute.[3]

Recitals on the face of a school-district bond are neither prima facie evidence nor conclusive evidence of the authority to issue them; and, in action thereon, all of the steps necessary to the authority to issue them must be proved, whether the bonds recite that these steps have been taken or not. Recitals on the bonds themselves prove nothing. The bonds are just as valid without them. They do not dispense with the necessity of proving what they recite when an action is brought on the bond. All of the steps necessary to confer the authority to issue the bond must be proved.[4] A judgment in favor of a bond holder on school-district bonds establishes the validity of the bonds and precludes the district from subsequently setting up the claim of invalidity.[5]

[1] *Wilson* v. *Huron*, 12 S.D. 535.

[2] *National Life Insurance Co.* v. *Board of Education*, 62 Fed. 778.

[3] *Gable* v. *Allison*, 146 Fed. 113.

[4] *Heard* v. *Calhoun*, 45 Mo. App. 660.

[5] *Taylor* v. *Garfield*, 97 Fed. 753.